

Freedom of Information Act (FOIA) REQUEST

May 28, 2011

Mr. Bernard Parker, FOIA Officer  
U.S. Merit Systems Protection Board  
1615 M Street, NW.  
Washington, DC 20419

fax at (202) 653-7130 <FOIAHQ@mspb.gov> <www.mspb.gov>

Subject: New FOIA request based on Chairman Grundmann's May 24, 2011 denial of my FOIA appeal in FOIA no. CB11-171

Dear Mr. Parker,

As MSPB leadership knows, I contend there is a 32 year-long "broken covenant" by Civil Service Reform Act of 1978 (CSRA). I contend that the government (i.e. Courts, Congress, the Government Accountability Office (GAO), the President, the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), and agency heads) have failed to ensure federal employees are adequately protected from reprisal and other types of prohibited personnel practices (PPPs) as they do their duties in a trustworthy fashion, per the merit system principles - the fundamental objective of the CSRA.

My contentions are detailed at <www.broken-covenant.org>. I contend that thousands of loyal patriotic federal employees, foolhardy enough to put duty to the Constitution and the common good before their personal economies were unlawfully betrayed for doing so since 1979. I contend America is much diminished and more threatened as a result. Furthermore, I contend that if my concerns are substantiated at the Office of Legal Counsel of the Department of Justice, it is GOOD NEWS for America in that: 1) a previously unidentified significant causal factor to much which has befallen and besets America has been exposed, and 2) it can readily be corrected.

If my contentions are substantiated, then the Merit Systems Protection Board - the 3 person Board - for past 32 years, its lawyer members and the lawyers in its Office of General Counsel and Office of Policy are, in my opinion, most responsible. Only MSPB has the positive, nondiscretionary, statutory duty to conduct oversight, via its special studies function at 5 U.S.C. section 1204(a)(3), of the Office of Special Counsel's interpretation of and compliance with its nondiscretionary statutory duties to protect federal employees from PPPs, most specifically its duty to report its determinations of PPPs at 5 U.S.C. section 1214(e), and agency heads interpretation of and compliance with their nondiscretionary statutory duties to prevent PPPs, per 5 U.S.C. section 2302(c).

Exhibit 1

I am a licensed professional engineer (PE) employed in the Department of Energy as a nuclear safety engineer. I was so foolhardy as to put my positive legal and professional duty to be a "mandated reporter," when necessary, to protect others related to my professional duties for their health and safety, regardless of possible job/career retribution. PE's are "mandated reporters" in such circumstances, I acted consistent with that duty. My actions played a positive, perhaps significant, role in the passage of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000, by which over 65,000 diseased, disabled, or prematurely deceased Department of Energy contractor workers (or their survivors) have received over 7 billion dollars in compensation.

So, as I now see it, I have done my positive legal and professional duty, at great personal and professional cost, as a licensed professional employed by a government agency because other licensed professionals employed by a government agency - attorneys who served on the 3 person Board during past 32 years - betrayed their duty to enforce the laws entrusted to them, particularly section 1204(a)(3).

Why has this gone on for 32 years? As I understand Chairman Grundmann's reasoning in denying my FOIA appeal, she is really not the Chair of MSPB, with a positive legal duty to ensure MSPB is properly interpreting and complying with its non-adjudicatory statutory duties to protect the Merit Systems in the Executive Branch from PPPs - and to "blow whistles" as a "mandated reporter," if it is not. Instead, she has an attorney-client relationship with MSPB, her government employer. Because MSPB is her client, she must as a licensed attorney - what she was before becoming Chair of MSPB and what she will continue to be when her term at MSPB ends - hold paramount MSPB's interests - not those of the federal civil service when the two come into conflict. Therefore she is a "mandated NON-reporter" about MSPB's failures or possible failures to properly interpret and comply with its nondiscretionary duties regarding conducting special studies and oversight of Office of Personnel Management regulations.

Additionally, Ms. Grundmann has a background as a lawyer employed by federal employee unions, so she had an attorney-client relationship with them. In my opinion, federal employee unions have devolved to become low-level protection rackets, which use fear of PPPs to sell union memberships at about \$400 - \$500/year to federal employees. Federal employee unions, in my close observation and experience, benefit from the "broken covenant" of the Civil Service Reform Act of 1978 - they do NOT want federal employees to be adequately protected from PPPs by agency heads and OSC, because if they were, then they would be even less likely to voluntarily pay union dues. Federal employee unions want status quo - "OSC is the last place an employee alleging a PPP should go" - to continue because it helps sell union memberships.

In fact, federal employee unions were the chief advocate of a 1994 law that put severe restrictions on federal employees represented by federal employee unions (i.e. their members and prospective members, only about 20% of federal employees represented by federal employee unions actually pay their dues), seeking protection from PPPs at OSC, per 5 U.S.C. section 7121(g). They did this to make their remedy for PPPs - binding arbitration - more exclusive. Why? To help sell

union memberships, to pay the exorbitant salaries of their officers and their employed attorneys. So, federal employee unions and their lawyers want and benefit from a broken, lawbreaking fraud of federal law enforcement agency at OSC - one that is "the last place a federal employee alleging a PPP should go," and lawbreaking enabler of OSC's fraud at MSPB.

To clarify my understanding of Ms. Grundmann's ethical obligations as a licensed attorney who is Chair of MSPB and who was previously employed by Federal employee unions, I submit a FOIA request for any responsive records for the following:

1. Any records relevant to Ms. Grundmann's duties to be a "mandated reporter" as a lawyer who is the Chairman of MSPB, a federal agency, if she determines there is reasonable cause to believe MSPB has misinterpreted and/or misapplied its nondiscretionary duties regarding its special studies function at 5 U.S.C. sections 1204(a)(3) and (e)(3) for past 32 years.
2. Any records relevant to Ms. Grundmann's duties to be a "mandated NON-reporter" as a lawyer who is the Chairman of MSPB, a federal agency, if she determines there is reasonable cause to believe MSPB has misinterpreted and/or misapplied its nondiscretionary duties regarding its special studies function at 5 U.S.C. sections 1204(a)(3) and (e)(3) for past 32 years.
3. Any records relevant to Ms. Grundmann's duties to be a "mandated reporter" as a lawyer who is the Chairman of MSPB, a federal agency, if she determines there is reasonable cause to believe MSPB has misinterpreted and/or misapplied its nondiscretionary duties regarding its oversight function of the Office of Personnel Management at 5 U.S.C. section 1204(a)(4) and (f) for past 32 years.
4. Any records relevant to Ms. Grundmann's duties to be a "mandated NON-reporter" as a lawyer who is the Chairman of MSPB, a federal agency, if she determines there is reasonable cause to believe MSPB has misinterpreted and/or misapplied its nondiscretionary duties regarding its oversight function of the Office of Personnel Management at 5 U.S.C. section 1204(a)(4) and (f) for past 32 years.
5. Any records relevant to Ms. Grundmann's duties to be a "mandated NON-reporter" as a lawyer who is the Chairman MSPB if she determines there is reasonable cause to believe MSPB has misinterpreted and/or misapplied its duties regarding its oversight function of the Office of Personnel Management at 5 U.S.C. section 1204(a)(4) and (f) for past 32 years, because she was previously employed by federal employee unions, which possibly benefitted from the government lawbreaking, because fear of PPPs helps sell union memberships.
6. Any records relevant to Ms. Grundmann's duties to be a "mandated NON-reporter" as a lawyer who is the Chairman MSPB if she determines there is reasonable cause to believe

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MSPB has misinterpreted and/or misapplied its duties regarding its special studies function at 5 U.S.C. sections 1204(a)(3) and (e)(3) for past 32 years, because she was previously employed by federal employee unions, who benefitted from the government lawbreaking, because a broken, lawbreaking fraud of an OSC - "the last place a government employee alleging a PPP should go" - and a lawbreaking MSPB that enables it, helps sell federal employee union memberships.

7. Any records related to any evaluation MSPB has conducted of its interpretation of and compliance with its non-discretionary statutory duties at 5 U.S.C. sections 1204(a)(3), (a)(4), (e)(3) and/or (f).
8. Any records related to any consideration MSPB has made of telling the President, Congress or anyone else that its interpretations of and compliance with 5 U.S.C. sections 1204(a)(3), (a)(4), (e)(3) and/or (f) during past 32 years is suspect.
9. Any records related to any consideration MSPB has made of seeking interpretations from the Office of Legal Counsel of the Department of Justice of its interpretations of 5 U.S.C. sections 1204(a)(3), (a)(4), (e)(3) and/or (f) during past 32 years.
10. Any records related to MSPB's compliance with its nondiscretionary statutory duty to conduct reviews of OPM rules and regulations for possible PPP's, per 5 U.S.C. sections 1204(a)(4) and/or (f)(1)(A), on its own motion.
11. Any records of any written complaints received from the Office of Special Counsel (OSC), requesting such a review, per section 1204(f)(1)(c),
12. Any records of any "special studies" conducted by MSPB, per sections 1204(a)(3) and (e)(3), that considered MSPB's and OSC's compliance with their positive, nondiscretionary, statutory duties to proactively review any OPM rule or regulation for possible PPP's.

I will pay up to \$100 for the records I seek.

Respectfully,

Joseph Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
jpcarson@tds.net  
865-300-5831

## Joe Carson

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**From:** Joe Carson <jpcarson@tds.net>  
**Sent:** Wednesday, August 03, 2011 6:24 PM  
**To:** 'Parker, Bernard'  
**Subject:** RE: status of FOIA request CB11-278?

I suggest we talk about it to ensure we have a common understanding and then I will document that understanding in an email to you. When it is convenient to talk?

Joe Carson

**From:** Parker, Bernard [mailto:Bernard.Parker@mspb.gov]  
**Sent:** Wednesday, August 03, 2011 5:37 PM  
**To:** Joe Carson  
**Subject:** RE: status of FOIA request CB11-278?

Mr. Carson:

FOIA Tracking Number CB11 - 278

After further review of your FOIA request dated May 28, 2011, we need some clarification about the following terms "mandated reporter" and "mandated NON reporter" that you used in paragraphs 1 through 6.

Please respond by August 8, 2011.

Thanks  
Bernard Parker

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**From:** Joe Carson [mailto:jpcarson@tds.net]  
**Sent:** Monday, August 01, 2011 7:40 PM  
**To:** Parker, Bernard  
**Subject:** RE: status of FOIA request CB11-278?

thanks for the update. Please inform me when the response is mailed or if there is another delay.

Joe Carson

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**From:** Parker, Bernard [mailto:Bernard.Parker@mspb.gov]  
**Sent:** Monday, August 01, 2011 5:32 PM  
**To:** Joe Carson  
**Subject:** RE: status of FOIA request CB11-278?

Mr. Carson:

CB11 - 278

Exhibit 2

We request an additional 10 work days to process your request that was received on May 31, 2011. The extension is necessary to conduct further research.

Sincerely,

Bernard Parker  
Information Management Specialist

**From:** Joe Carson [mailto:jpcarson@tds.net]  
**Sent:** Saturday, July 30, 2011 7:37 PM  
**To:** FOIAHQ  
**Cc:** harber, loretta  
**Subject:** status of FOIA request CB11-278?

Mr. Parker,

Please provide me an update on this FOIA request to forestall my having to file a FOIA suit. Filing a suit will cost me about \$370, but it creates work on part of DOJ and a federal judge, so I do not wish to file without good cause. It will take me about 2 hours or less to modify a previous FOIA suit, 30 minutes to serve by registered mail.

Respectfully,

Joe Carson, PE  
865-300-5831

Exhibit 2  
page 2

## Joe Carson

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**From:** Joe Carson <jpcarson@tds.net>  
**Sent:** Wednesday, August 17, 2011 6:01 PM  
**To:** 'gauger\_jeffrey\_mspb\_counsel'; FOIAHQ@mspb.gov  
**Subject:** FOIA suit about FOIA request CB11 - 278

Dear Mr. Parker and Mr. Gauger,

I have left repeated voice mail messages, asking for someone to contact me to resolve MSPB's uncertainty about meaning of "mandated reporter" and mandated non-reporter" in my FOIA request.

No one has responded to date. If I do not receive a phone call by COB 8/19, I intend to file a FOIA suit.

Respectfully,

Joe Carson, PE  
865-576-1478 w  
865-300-5831 c

Exhibit 3